IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

CRL.A.No. 1282 of 2004(C)

CC.155/1995 of JUDL.MAGISTRATE OF FIRST CLASS-I, CHERTHALA

.....

APPELLANT: COMPALINANT

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

RESPONDENTS: ACCUSED

---

1. KUNJUNNI, S/O.KANDA,
KURUPPANTHARAKARIYIL HOUSE, WARD NO.5,
PALLIPPURAM PANCHAYAT.

2. PRABHAKARAN, S/O.KUNJUNNI,
VELIKAKATH HOUSE, WARD NO.5, PALLIPPURAM
PANCHAYAT.

3. VIJAYAN, S/O.KUNJUNNI,
KURUPPANTHARAKARIYIL HOUSE, WARD NO.5,
PALLIPPURAM PANCHAYAT.

4. MANOHARAN, S/O.KUNJUNNI,
KURUPPANTHARAKARIYIL HOUSE, WARD NO.5,
PALLIPPURAM PANCHAYAT.

5. SIVADASAN, S/O.MADHAVAN,
THEKKEKARIYIL HOUSE, WARD NO.5,
PALLIPPURAM PANCHAYAT.

6. KARUNAKARAN, S/O.KESAVAN,
PUTHAN NIKARTH HOUSE, WARD NO.5,
PALLIPPURAM PANCHAYAT.

7. KARUNAKARAN, S/O.RAMAN,
KOLOTHU HOUSE, WARD NO.7, PALLIPPURAM PANCHAYAT.

8. JOY, S/O.MATHAI, PUTHANPPURAKKAL
HOUSE, WARD NO.2, PALLIPPURAM PANCHAYAT.

9. PURUSHOTHAMAN, S/O.KUNJAN,
KODUMTHARA HOUSE, WARD NO.2, PALLIPPURAM PANCHAYAT.

10. ASOKAN, S/O.VELAYUDHAN, PANATHARA HOUSE, WARD NO.5, PALLIPPURAM PANCHAYAT.

11. VISWANATHAN, S/O.KUTTAN, KOYILTHARAKARIYIL HOUSE, WARD NO.5, PALLIPPURAM PANCHAYAT.

12. NARAYANAN, S/O.RAMAN, CHERUKATTU THARAYIL HOUSE, WARD NO.5, PALLIPPURAM PANCHAYAT.

13. MOHANAN, S/O.KESAVAN, PAINGATHIL HOUSE, WARD NO.2, PALLIPPURAM PANCHAYAT.

14. DASAPPAN, S/O.RAMAN, MANGALAKATTU HOUSE, WARD NO.2, IN PALLIPPURAM PANCHAYAT.

15. RAVI, S/O.RAMAN, PUTHANTHARA NIKARTHIL HOUSE, WARD NO.2 IN PALLIPPURAM PANCHAYAT.

16. ANILKUMAR, S/O.KARUNAKARAN, THOTTUCHIRA PUTHANNIKARTHIL HOUSE, WARD NO.2, PALLIPPURAM PANCHAYAT.

17. CHELLAPPAN, S/O.NARAYANAN, PAINGATHIL CHIRA HOUSE, WARD NO.2, IN PALLIPPURAM PANCHAYAT.

18. RAGHAVAN, S/O.KRISHNAN, PANATHARA NIKARTHIL HOUSE, WARD NO.5, IN PALLIPPURAM PANCHAYAT.

19. PARAMESWARAN, S/O.GOPALAN, KAITHAKATTU CHIRAYIL HOUSE, WARD NO.2, IN PALLIPPURAM PANCHAYAT.

20. MONSA, S/O.MATHEW, PUTHANPURAKKAL HOUSE, WARD NO.2 IN PALLIPPURAM PANCHAYAT.

BY ADV. SRI.TONY MATHEW
SRI.P.VIJAYA BHANU
SRI.PRASUN.S
SMT.DAISY THAMPI (DEFACTO COMPLAINANT)

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON **15/06/2007**, THE COURT ON **25/06/2007** DELIVERED THE FOLLOWING:

V.RAMKUMAR, J.

.....

Crl.Appeal No. 1282 of 2004

.....

Dated: 25-06-2007

JUDGMENT

In this Appeal filed under Sec. 378 (1) Cr.P.C. the State challenges the judgment dated 14-8-2000 in C.C. 155 of 1995 on the file of the J.F.C.M., Cherthala acquitting the 20 accused persons of the charge for offences punishable under Sections 143, 147, 447, 427 and 506 (ii) read with Sec. 149 I.P.C.

2. The case of the prosecution can be summarised as follows:-

On 24-8-1994 at about 7 a.m. in Pallippuram Village, accused Nos. 1 to 20 out of their enmity towards P.W.1 and others formed themselves into an unlawful assembly armed with deadly weapons like chopper, spade, crowbar, iron rods etc. and in furtherance of their common object to cause loss and damage to P.W.1, criminally trespassed into the courtyard of P.W.1's house bearing No. II/767 of Pallippuram Panchayath and destroyed the hen coop, the shed for keeping ducks, the laundry stone made of granite and the boundary fence on the north -

western corner of the property and also criminally intimidated P.W.1 by brandishing the above deadly weapons causing fear of death and P.w.1 sustained a loss to the tune of Rs. 2,000/-. The accused have thereby committed offences punishable under Sections 143, 147, 447, 427 and 506 (ii) read with Section 149 I.P.C.

3. On the accused pleading not guilty to the charge framed against them by the court below for the aforementioned offences, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 7 witnesses as P.Ws 1 to 7 and got marked 5 documents as Exts.P1 to P5.

4. After the close of the prosecution evidence, the accused were questioned under Sec. 313 (1) (b) Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. They denied those circumstances and maintained their innocence.

5. On being called upon to enter on their defence and to adduce any evidence in support thereof , the accused examined one witness as DW 1. Exts. D1 to D7 were also got marked on their side.

6. The learned Magistrate, after trial, as per judgment 14-8-2000 acquitted all the accused of the offences charged against them. It is the said judgment which is assailed in this appeal by the State.

7. I heard Adv. Sri.K.S.Sivakumar, the learned Public Prosecutor in support of the Appeal and Adv. Sri. Vijayabhanu,, the learned counsel who defended the respondents/accused.

8. The only point which arises for consideration in this appeal as to whether the judgment appealed against is sustainable or not ?

THE POINT:

9. After an anxious re-appraisal of the oral and documentary evidence in the case and after hearing the arguments on either side, I do not find any good ground to interfere with the judgment under appeal.

10. P.Ws 1 to 4 are the occurrence witnesses of whom P.W.4 turned hostile to the prosecution. P.W.1 is the first informant. Eventhough he would depose that he had lodged a previously prepared written complaint, Ext.P1 F.I. statement shows that he went to the police station and gave a statement which was recorded by P.W.6. Going by the F.I. statement the

seven named accused persons and 25 identifiable persons totaling to 32 in number allegedly committed the offence. But, while in the witness box, P.W.1 would say that there were only 20 assailants. He would further say that he knew the names of all the 20 assailants. But in Ext.P1 he has given the names of A1 to A7 only. P.W.1 confessed that A8 is none other than his paternal uncle's son and A8 was one among the 20 assailants. Still P.W.1 did not mention his name in the F.I. statement. P.W.1 was unhappy over the sale of the disputed property by the mother of A8 in favour of A1. That property was earlier in the enjoyment of P.W.1 as a mortgagee. This was the motive which P.W.1 had towards the accused. His testimony was not accepted by the trial court.

11. P.W.2 is the wife of P.W.1. According to her, 15 people from the neighbourhood had witnessed the occurrence. But none of them was cited by the prosecution nor examined as a prosecution witnesses. Going by her 161 statement both P.Ws 3 and 4 had seen the occurrence. But when examined before Court P.W2 denied having given such a statement to the police. She frankly confessed that she did not clearly see the acts committed by the accused persons. She had no case before the

police that she was intimidated by brandishing a chopper. But she came out with such an improved version before court.

12. P.W.3 who claimed himself to be the branch committee member of the local C.P.I. (M) would claim to have come there to talk about the property dispute and would assert that P.W.4 was also there and both of them had seen the occurrence. But P.W.4 did not support the said version. P.Ws 1 and 2 have no case that either P.W.3 or P.W.4 was present at the time of occurrence. The learned Magistrate who had the unique advantage on seeing the witnesses and assessing their credibility was not inclined to believe P.Ws 1 to 4. I do not find any infirmity in the appreciation of the oral evidence of the prosecution witnesses by the trial court.

Under these circumstance, I find no good ground to interfere with the order of acquittal recorded by the trial court. This Appeal which is devoid of any merit is accordingly dismissed.

V. RAMKUMAR, JUDGE.

ani

V.RAMKUMAR, J.

.....

Crl.Appeal No. 1282 of 2004

.....

Dated: 25-06-2007

JUDGMENT